

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

|                            |   |   |
|----------------------------|---|---|
| <b>MARY L. McCLATCHER,</b> | ) | <b>CASE NO. 1:07 CV 408</b>             |
|                            | ) |   |
| <b>Plaintiff,</b>          | ) |   |
|                            | ) |   |
| <b>v.</b>                  | ) | <b>JUDGE DONALD C. NUGENT</b>           |
|                            | ) |   |
|                            | ) | <b>Magistrate Judge James S. Gallas</b> |
| <b>COMMISSIONER OF</b>     | ) |   |
| <b>SOCIAL SECURITY,</b>    | ) | <b>MEMORANDUM OPINION</b>               |
|                            | ) | <b><u>AND ORDER</u></b>                 |
| <b>Defendant.</b>          | ) |   |

This matter is before the Court upon the Report and Recommendation of Magistrate Judge James S. Gallas (Document #50), recommending that the Plaintiff, Mary L. McClatcher, be awarded attorney fees and expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(c) & (d), in the amount of \$11,375.60. (Docket #50.) On September 23, 2008, the Commissioner filed its Response to the Report and Recommended decision of Magistrate Judge Gallas, stating that it will not be filing any objections. (Docket #51.)

**Standard of Review for a Magistrate Judge's  
Report and Recommendation**

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court

reviews the case *de novo*. FED. R. CIV. P. 72(b)(3) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings." Notwithstanding the foregoing, the Court has reviewed the Report and Recommendation of the instant case *de novo*. See *Delgado v. Bowen*, 782 F.2d 79 (7th Cir. 1986).

### **Conclusion**

The Court has reviewed the Report and Recommendation and finds it to be well-reasoned and correct. The Court hereby ADOPTS the Report and Recommendation of Magistrate Judge Gallas (Document #50) in its entirety. Ms. McClatcher's Motion pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(c) & (d) (Docket #44), is hereby

GRANTED. The requested fees, \$11,375.60, shall be paid directly to counsel Paulette F. Balin per the assignment (Docket #45) filed with her Motion for Attorney Fees.

IT IS SO ORDERED.

s/Donald C. Nugent

DONALD C. NUGENT

United States District Judge

DATED: September 30, 2008